

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,
Department of Justice
Antitrust Division
1401 H Street, N.W., Suite 8000
Washington, D.C. 20530,

Plaintiff,

v.

SBC COMMUNICATIONS INC.,
175 East Houston
San Antonio, TX 78205

and

AMERITECH CORPORATION,
30 S. Wacker Drive
Chicago, IL 60606

Defendants.

CASE NUMBER: 1:99CV00715
JUDGE: Thomas Penfield Jackson
DECK TYPE: Antitrust
DATE STAMP: 03-23/99

COMPLAINT

The United States of America, acting under direction of the Attorney General of the United States, brings this civil antitrust action to enjoin defendant SBC Communications Inc. (“SBC”) from acquiring defendant Ameritech Corporation (“Ameritech”) and to obtain other relief as appropriate. The United States of America alleges as follows:

1. On May 10, 1998, SBC and Ameritech entered into a purchase agreement under which SBC would acquire Ameritech. The United States seeks to enjoin this transaction because

it would significantly lessen competition in wireless mobile telephone services in seventeen markets in Illinois, Indiana, and Missouri.

2. SBC and Ameritech are two of the remaining five Regional Bell Operating Companies (“RBOCs”) created in 1984 by the consent decree settling the United States’ antitrust case against American Telephone & Telegraph Co. SBC and Ameritech each provide local exchange services in distinct regions, and also provide wireless mobile telephone services, including cellular mobile telephone services, both within and outside of their local exchange service regions.

3. This acquisition affects fourteen markets where competing cellular systems are owned by SBC and Ameritech, as well as three additional markets where competing cellular systems are owned by Ameritech and Comcast Cellular Corporation (“Comcast”), which SBC is acquiring under a January 19, 1999 agreement. These seventeen markets, which have a total population of approximately 11 million, are herein referred to as the “Overlapping Markets.” The cellular systems owned by SBC and Ameritech are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services, in fourteen cellular license areas in the states of Illinois, Indiana, and Missouri, herein referred to as the “SBC/Ameritech Overlapping Markets.” In addition, in three cellular license areas in the state of Illinois, herein referred to as the “Comcast/Ameritech Overlapping Markets,” the cellular systems owned by Ameritech and Comcast are the only two providers of cellular mobile telephone services, and the two primary providers of all wireless mobile telephone services.

4. SBC and Ameritech are direct competitors in wireless mobile telephone services in the SBC/Ameritech Overlapping Markets. Comcast and Ameritech are direct competitors in

wireless mobile telephone services in the Comcast/Ameritech Overlapping Markets. In each of the Overlapping Markets, both cellular providers compete to sell the best quality service at the lowest possible rates and are each other's most significant competitors.

5. If SBC's plan to acquire Ameritech were consummated, only one provider of cellular mobile telephone services would remain available to consumers in the SBC/Ameritech Overlapping Markets because SBC would own both cellular systems in those areas. In addition, if SBC's plan to acquire Ameritech were consummated, SBC, which already operates Comcast's cellular systems in the Comcast/Ameritech Overlapping Markets, would own or operate both of the cellular systems in the Comcast/Ameritech Overlapping Markets. As a result, unless the SBC/Ameritech acquisition is blocked, the level of concentration among firms providing wireless mobile telephone services in the Overlapping Markets, which is already high, will be significantly increased, and competition for wireless mobile telecommunications services will be substantially lessened in the Overlapping Markets. This will result in increased prices to consumers for wireless mobile telephone services and reductions in the quality of wireless mobile telephone services, either because of unilateral actions by SBC or coordinated interaction among SBC and the limited number of other remaining competitors in the Overlapping Markets.

I.

JURISDICTION AND VENUE

6. This action is filed by the United States under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, to prevent and restrain the defendants from violating Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18.

7. Defendants are engaged in interstate commerce and in activities substantially affecting interstate commerce. The Court has subject matter jurisdiction over this action and jurisdiction over the parties pursuant to 15 U.S.C. §§ 22 and 25, and 28 U.S.C. §§ 1331 and 1337.

8. Defendants transact business or are found in the District of Columbia. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 (b) and (c).

II.

THE DEFENDANTS AND THE TRANSACTION

9. SBC, with headquarters in San Antonio, Texas, is the second largest RBOC in the United States, with approximately 43 million total local telephone access lines. In 1998, SBC had revenues in excess of \$28 billion. SBC provides local telephone services to retail customers in Arkansas, California, Connecticut, Kansas, Missouri, Nevada, Oklahoma, and Texas, as well as cellular mobile telephone services or other wireless mobile telephone services in those states. SBC also provides cellular mobile telephone services or other wireless mobile telephone services in some areas outside its local exchange service region, including the District of Columbia and areas within the states of Illinois, Indiana, Maryland, Massachusetts, Rhode Island, New York, Virginia, and West Virginia. SBC, through its Cellular One cellular systems out-of-region and its in-region Southwestern Bell, Pacific Bell, Nevada Bell and SNET cellular or other wireless mobile systems, is the nation's third largest wireless mobile telephone service provider, with about 6.5 million subscribers nationwide. SBC also has entered into an agreement, dated January 19, 1999, to acquire Comcast for \$1.67 billion, which would make SBC a provider of cellular mobile telephone services in additional areas in Delaware, Illinois, Indiana, New Jersey, and Pennsylvania. SBC already manages Comcast's cellular systems in Illinois. The acquisition

of the Comcast cellular systems would add about 800,000 subscribers to SBC's total of wireless subscribers nationwide.

10. Ameritech, with headquarters in Chicago, Illinois, is the fourth largest RBOC in the United States, with approximately 24 million total local telephone access lines. In 1998, Ameritech had revenues in excess of \$17 billion. Ameritech provides local telephone service to retail customers in Illinois, Indiana, Michigan, Ohio, and Wisconsin, and also provides cellular mobile telephone service in these states, as well as in some states outside its local exchange service region, including Missouri and Hawaii. Ameritech is a major wireless mobile telephone service provider, with about 3.2 million subscribers nationwide.

11. On May 10, 1998, SBC and Ameritech entered into a purchase agreement whereby SBC would acquire Ameritech in exchange for SBC stock valued at approximately \$58 billion dollars at the time of the agreement. If this transaction is consummated, the combined total of SBC's and Ameritech's cellular and other wireless mobile telephone service subscribers will be 10.5 million, including the number of subscribers SBC would receive from its acquisition of Comcast.

III.

TRADE AND COMMERCE

A. Nature of Trade and Commerce

12. Wireless mobile telephone services permit users to make and receive telephone calls, using radio transmissions, while traveling by car or by other means. The mobility afforded by this service is a valuable feature to consumers, and cellular and other wireless mobile telephone services are commonly priced at a substantial premium above landline services. In order to provide this capability, wireless carriers must deploy an extensive network of switches and radio

transmitters and receivers, and interconnect this network with the networks of local and long distance landline carriers, and with the networks of other wireless carriers. In 1998, revenues from the sale of wireless mobile telephone services totaled approximately \$30 billion in the United States.

13. Initially, wireless mobile telephone services were provided principally by two cellular systems in each license area, including the Overlapping Markets. Cellular licenses were awarded by the Federal Communications Commission (“FCC”) beginning in the early 1980s for each Metropolitan Statistical Area (“MSA”) or Rural Service Area (“RSA”). A provider of Specialized Mobile Radio (“SMR”) services typically was also authorized to operate with some additional spectrum in these areas, including the Overlapping Markets. In 1995, the FCC allocated (and subsequently issued licenses for) additional spectrum for the provision of Personal Communications Services (“PCS”), a category of services which includes wireless mobile telephone services comparable to those offered by cellular carriers. In 1996, one SMR spectrum licensee began to use its SMR spectrum to offer wireless mobile telephone services, comparable to that offered by cellular and PCS providers and bundled with dispatch services, in a number of areas including some of the Overlapping Markets. While the areas for which PCS providers are licensed differ somewhat from the cellular MSAs and RSAs, they generally overlap with them. In many areas, including the Overlapping Markets, not all of the PCS license holders have started to offer services or even begun to construct the facilities necessary to begin offering service. The PCS providers have tended to enter first in the largest cities, entering in smaller markets only later and not to as great an extent. Moreover, even in those areas where one or more PCS providers have constructed their networks and have started to offer service, including

the Overlapping Markets, the incumbent cellular providers, such as SBC and Ameritech, still typically account for the great majority of the market. In the SBC/Ameritech Overlapping Markets, the combined market share of SBC and Ameritech in the provision of wireless mobile telephone services is in the range of 80 - 90%, taking into account other operational wireless mobile competitors. In the Comcast/Ameritech Overlapping Markets, the combined market share of Comcast and Ameritech similarly is much larger than that of all other wireless mobile competitors.

B. Relevant Product Market

14. Wireless mobile telephone service is a relevant product market. There are no cost-effective alternatives to wireless mobile telephone services for those customers using these services. If the price of wireless mobile telephone service were to increase by a small but significant amount, there would not be a sufficient number of customers that would switch away from wireless mobile telephone services to make that price increase unprofitable. Wireless mobile telephone service is therefore a relevant product market, and a line of commerce within the meaning of Section 7 of the Clayton Act.

C. Relevant Geographic Markets

15. Each Overlapping Market is a relevant geographic market. The FCC has licensed only a limited number of firms to provide wireless mobile telephone services in these areas based upon availability of radio spectrum. If the price of wireless mobile telephone service were to increase by a small but significant amount in any of the Overlapping Markets, there would not be a sufficient number of customers that would switch to wireless mobile telephone services in a different Overlapping Market to make that price increase unprofitable, because consumers

cannot turn to providers of wireless mobile telephone services outside of the Overlapping Markets to obtain wireless mobile telephone services in the Overlapping Markets. Each Overlapping Market is therefore a relevant geographic market, and a section of the country within the meaning of Section 7 of the Clayton Act. The Overlapping Markets are listed below:

SBC/Ameritech Overlapping Markets

MSAs

Chicago, IL
St. Louis, MO-IL
Gary-Hammond-East Chicago, IN
Springfield, IL
Champaign-Urbana-Rantoul, IL
Bloomington-Normal, IL
Decatur, IL

RSAs

Illinois 2 -- Bureau
Illinois 5 -- Mason
Illinois 6 -- Montgomery
Missouri 8 -- Callaway
Missouri 12 -- Maries
Missouri 18 -- Perry
Missouri 19 -- Stoddard

Comcast/Ameritech Overlapping Markets

MSAs

Joliet, IL
Aurora-Elgin, IL
Kankakee, IL (Comcast has a 10.07% interest in this cellular system)

D. Anticompetitive Effects and Entry

16. Currently, SBC and Ameritech both offer cellular mobile telephone service in the fourteen SBC/Ameritech Overlapping Markets. Their individual market shares in the SBC/Ameritech Overlapping Markets, if measured on the basis of the number of subscribers or

wireless lines served, range from 30% to over 50%, and their combined market shares in these markets would range from 80 - 90%.

17. There is already a high level of concentration in the provision of wireless mobile telephone services in the SBC/Ameritech Overlapping Markets. As measured by the Herfindahl-Hirschman Index (“HHI”), which is commonly employed by the Department of Justice in merger analysis and is explained in more detail in Appendix A to this Complaint, concentration in these markets is already in the range of 3200 - 4100, well above the 1800 threshold at which the Department normally considers a market to be highly concentrated. After the merger, the HHI in these markets will range from 6400 to 8100.

18. Competition between SBC and Ameritech, as the two largest providers of wireless mobile telephone services in the SBC/Ameritech Overlapping Markets, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition. If SBC’s acquisition of Ameritech is consummated, the SBC/Ameritech Overlapping Markets will become substantially more concentrated, and the competition between SBC and Ameritech in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between SBC and Ameritech, there will be an increased likelihood both of unilateral actions by the combined firm in these markets to increase prices, diminish the quality or quantity of service provided, or refrain from making investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the merger of SBC and Ameritech is that prices would increase, and the quality or quantity of

service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the SBC/Ameritech Overlapping Markets.

19. Currently, Comcast and Ameritech both offer cellular mobile telephone service in the Comcast/Ameritech Overlapping Markets. They have the largest market shares of any providers of wireless mobile telephone services in these markets, and between them serve the great majority of subscribers. There is already a high level of concentration in the provision of wireless mobile wireless telephone services in the Comcast/Ameritech Overlapping Markets. After SBC's acquisitions of Ameritech and Comcast, concentration in these markets would increase far in excess of the amount that is normally considered significant in merger analysis. Competition between Comcast and Ameritech, as the two largest providers of wireless mobile telephone services in the Comcast/Ameritech Overlapping Markets, has resulted in lower prices and higher quality in these markets than would otherwise have existed absent such competition.

20. Because SBC already manages the Comcast cellular systems in Illinois, after the SBC/Ameritech acquisition the cellular systems in the Comcast/Ameritech Overlapping Markets will be under common control. When SBC acquires both Ameritech and Comcast, the cellular systems in the Comcast/Ameritech Overlapping Markets will be commonly owned, entirely or in part. If SBC acquires Ameritech, the Comcast/Ameritech Overlapping Markets will become substantially more concentrated, and the competition between Comcast and Ameritech in wireless mobile telephone services in these markets will be eliminated. As a result of the loss in competition between the Comcast and Ameritech cellular systems, there will be an increased likelihood both of unilateral actions by the combined SBC/Ameritech firm in these markets to increase prices, diminish the quality or quantity of service provided, or refrain from making

investments in network improvements, and of coordinated interaction among the limited number of remaining competitors that could lead to similar anticompetitive results. Therefore, the likely effect of the merger of SBC and Ameritech is that prices would increase, and the quality or quantity of service together with incentives to improve network facilities would decrease, in the provision of wireless mobile telephone services in the Comcast/Ameritech Overlapping Markets.

21. In the SBC/Ameritech Overlapping Markets in the St. Louis area, including the St. Louis MO-IL MSA and the four Missouri RSAs that are Overlapping Markets, Ameritech planned, prior to its announcement of its agreement to be acquired by SBC, to provide local exchange and long distance telephone services in SBC's local telephone service area, primarily by selling bundled packages of such services and its cellular mobile telephone service to existing Ameritech residential cellular customers. There is no alternative source of such a bundled product in the St. Louis area at present. Ameritech expected that its plan would enhance its ability to retain existing cellular customers. Ameritech had made extensive preparations for entry, over the course of more than a year, and was ready to begin providing local exchange and long distance telephone services to its cellular mobile telephone customers at the time it agreed to be acquired by SBC. Shortly thereafter, because it was being acquired by SBC, Ameritech decided not to implement its local exchange and long distance entry plans in the St. Louis area. The acquisition would prevent the realization of this new competition.

22. It is unlikely that new entry in response to a small but significant price increase by the combined company for wireless mobile telephone services in the Overlapping Markets would be timely and sufficient to mitigate the competitive harm resulting from this acquisition, if it were to be consummated.

IV.

VIOLATION ALLEGED

23. The effect of SBC's acquisition of Ameritech, if it were to be consummated, will be to lessen competition substantially in interstate trade and commerce in the Overlapping Markets, in violation of Section 7 of the Clayton Act.

24. Unless restrained, the transaction will likely have the following effects in wireless mobile telephone services in the Overlapping Markets, among others:

- a. actual and potential competition between SBC and Ameritech and between Ameritech and Comcast will be eliminated;
- b. competition in general will be lessened substantially;
- c. prices are likely to increase;
- d. the quality and/or quantity of services are likely to decrease; and
- e. incentives to improve the cellular wireless networks will be reduced.

VI.

REQUESTED RELIEF

WHEREFORE, Plaintiff requests:

25. That the proposed acquisition by SBC of Ameritech be adjudged to violate Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18;

26. That the defendants be permanently enjoined from and restrained from carrying out the purchase agreement, dated May 10, 1998, or from entering into or carrying out any

agreement, understanding, or plan, the effect of which would be to bring SBC and Ameritech under common ownership or control;

27. That plaintiff be awarded its costs of this action; and

28. That plaintiff have such other relief as the Court may deem just and proper.

Dated this 23rd day of March, 1999.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES

Joel I. Klein
Assistant Attorney General

Donald J. Russell
Chief, Telecommunications Task Force

A. Douglas Melamed
Principal Deputy Assistant Attorney General

Laury E. Bobbish
Assistant Chief, Telecommunications Task Force

Constance K. Robinson
Director of Operations and Merger
Enforcement

Carl Willner
D.C. Bar # 412841
Michael D. Chaleff
Juanita Harris
John M. Lynch
D.C. Bar # 418313
Anne M. Purcell
Trial Attorneys
Department of Justice
Antitrust Division
1401 H Street, N.W. Suite 8000
Washington, D.C. 20530
(202) 514-5813

APPENDIX A

DEFINITION OF “HHI”

The term “HHI” means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 ($30^2 + 30^2 + 20^2 + 20^2 = 2,600$). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 points are considered to be highly concentrated. Transactions that increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.